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Order 2001-12-6

Served: December 7, 2001



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 5th day of December, 2001

Essential air service at

**STAUNTON, VIRGINIA**

under 49 U.S.C. 41731 *et seq.*

**Docket OST-2001-10628-3**

**ORDER ALLOWING SUSPENSION OF SERVICE**

**Background**

On September 12, 2001, Atlantic Coast Airlines, Inc., d/b/a United Express, filed a 90-day notice of intent to suspend its unsubsidized service at Staunton, Virginia, as of December 12, 2001. In its notice, ACA states that traffic levels have been unsatisfactory, and requests that the Department allow it to suspend service before the end of the 90-day notice period, on December 1.

ACA had been operating four daily nonstop round trips to Washington's Dulles International Airport with 19-seat Jetstream 32 aircraft. Following the September 11 attacks, however, ACA reduced its schedule to two daily nonstop round trips. Staunton also receives unsubsidized service from Air Midwest, Inc., d/b/a US Airways Express, which had been operating four nonstop round trips each weekday and six each weekend to Pittsburgh with 19-seat Beech 1900 aircraft, but reduced its schedule after September 11 to three round trips each weekday and five each weekend.<sup>1</sup>

Staunton's essential air service determination, as established by Order 94-5-7, May 6, 1994, requires at least two nonstop round trips each weekday and weekend to Washington providing at least 66 seats in each direction.

**Community Comments**

The Shenandoah Valley Regional Airport, on behalf of the community, has filed an objection to ACA's notice. The community notes that Staunton's designated hub is Washington, and that it is ACA's service, not Air Midwest's, that meets that aspect of the community's determination. The community also states that Air Midwest's current schedule to Pittsburgh of three round trips a day represents 57 seats, which would not meet the community's capacity guarantee of 66 seats if

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<sup>1</sup> See the Appendix for a map. Staunton's Shenandoah Valley Regional Airport also serves the nearby communities of Harrisonburg and Waynesboro, Virginia.

ACA were allowed to suspend service. Finally, the community believes that ACA is obligated to maintain service under section 105 of the Air Transportation Safety and System Stabilization Act, P.L. 107-42. Section 105(a) states that the Department "should take appropriate action to ensure that all communities that had scheduled air service before September 11, 2001, continue to receive adequate air transportation service and that essential air service to small communities continues without interruption," and section 105(c)(1) states that the Department "may require air carriers receiving direct financial assistance under this Act to maintain scheduled air service to any point served by that carrier before September 11, 2001." The community notes that, as of October 5, ACA had received about \$5.7 million and its code-share partner United had received about \$391 million under sections 101 and 103 of the statute.

### **Decision**

After careful consideration, we will allow ACA to suspend its service at Staunton as of December 12, the end of the 90-day notice period, at which time we will rely on Air Midwest's service to Pittsburgh to satisfy the community's essential air service needs. However, we will deny ACA's request to suspend service prior to the end of the 90-day period.

The community notes that ACA and United have received payments under sections 101 and 103 of P.L. 107-42, and believes that those payments obligate ACA to continue service at Staunton. According to section 101, however, those payments are specifically intended to compensate carriers for (a) losses associated with government-ordered stoppages of service, such as occurred immediately after the September 11 attacks, and (b) incremental losses incurred through December 31, 2001, as a direct result of those attacks.

By its own words, section 105 is precatory, not mandatory. Our experience in implementing the compensation sections of the statute indicates that carriers are generally sustaining losses in excess of the compensation provided for them, sometimes by substantial amounts. This experience has been substantiated by the Comptroller General who, in a letter report to Congressional requesters dated October 5, estimated industry losses through the end of the year at \$1.5 to \$5.5 billion *beyond* the \$5 billion in compensation that Congress appropriated. Under the circumstances, carriers have necessarily taken measures to restrain their system costs, including reductions on under-performing routes. The Airline Deregulation Act of 1978 granted carriers the ability to make adjustments to their domestic route networks, except in the case of essential air service, as discussed below. Impairing their ability to do so under the present circumstances, without just compensation for their losses, would raise very significant legal issues.

We recognize that Air Midwest's continuing service is not operated to Washington, which is designated as Staunton's hub in its essential air service determination. However, hub designations assume that service would not be offered from the community to any other hubs. If other service is in fact available when a carrier files notice to suspend its service, we consider whether the other service can meet the community's needs. In this case, we conclude that Air Midwest's service to Pittsburgh will meet Staunton's continuing need for a link to the

national air transportation system. Moreover, as a code-share partner of US Airways, Inc., the major carrier at Pittsburgh, Air Midwest is able to offer Staunton travelers on-line connecting service throughout US Airways' system. In fact, as ACA points out in its notice, we previously relied on service to Pittsburgh to meet Staunton's essential air service requirements for nearly four years, until ACA began service to Dulles in April 2000.<sup>2</sup>

The community notes that Air Midwest's three round trips each weekday with 19-seat aircraft provide a total of 57 seats, 9 short of Staunton's capacity guarantee of 66 seats. That guarantee was established in 1984 and was based on 40 enplanements a day at the statutory load-factor standard of 60 percent; it thus represents the maximum guarantee under the essential air service program. However, data provided to us by Air Midwest show that the Staunton-Pittsburgh market registered only 1,204 origin-and-destination passengers, or 602 enplanements, during October 2001. The October results reflected a 30.2 percent decrease from the August 2001 level of 1,725 origin-and-destination passengers, and represented 22.3 enplanements a day.<sup>3</sup> Air Midwest's current schedule accommodates the current level of traffic.

Although we have decided to allow ACA to suspend service at Staunton, we will deny ACA's request for an exemption from the 90-day notice provision contained in 49 U.S.C. 41734(a) to suspend service prior to December 12. The 90-day notice provision is intended to protect communities from abrupt losses of service, and we generally only grant exemptions from it with the consent of the affected communities. In this case, the Staunton community opposes such an exemption, and we will therefore uphold the community's statutory entitlement to the full 90-day notice period.

As a final matter, before ACA suspends service, we expect it to contact all passengers who hold reservations for flights that will be suspended, to inform them of the suspension and the availability of other service at Staunton, and to assist them in arranging alternate transportation.

This order is issued under authority delegated in 49 CFR 1.56a(f).

**ACCORDINGLY,**

1. We allow Atlantic Coast Airlines, Inc., d/b/a United Express, to suspend its scheduled air service at Staunton, Virginia, as of December 12, 2001;
2. We deny the request of Atlantic Coast Airlines, Inc., d/b/a United Express, for an exemption from 49 U.S.C. 41734(a) allowing it to suspend its scheduled air service at Staunton, Virginia, on less than 90 days' notice;

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<sup>2</sup> See Orders 96-6-8, June 10, 1996, and 2000-2-28, February 25, 2000. For examples of our policy in cases concerning other communities, see Orders 91-9-63, September 30, 1991, regarding Hancock/Houghton, Michigan; 98-3-17, March 18, 1998, regarding 11 western communities; and 2000-12-22, December 28, 2000, regarding Rhinelander, Wisconsin.

<sup>3</sup> Based on 27 weekdays and weekends in October.

3. We will rely on Air Midwest, Inc., d/b/a US Airways Express, to provide essential air service at Staunton, Virginia; and

4. We will serve copies of this order on the mayor and airport manager of Staunton, Virginia; the Virginia Department of Aviation; Atlantic Coast Airlines, Inc., d/b/a United Express, and Air Midwest, Inc., d/b/a US Airways Express.

By:

**READ C. VAN DE WATER**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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**STAUNTON, VIRGINIA,  
AND THE SURROUNDING REGION**

